

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1208

SPONSOR: Comprehensive Planning Committee and Senator Webster

SUBJECT: Time Share Plans

DATE: March 19, 2004

REVISED: 3/23/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
3.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
4.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/1 amendment</u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The Committee Substitute for Senate Bill 1208 revises provisions in ch. 721, F.S., (Florida Vacation Plan and Timesharing Act) to tailor regulation of personal property timeshare plans offered in Florida. Personal property timeshares are timeshare interests not permanently affixed to real property, such as cruise ships, houseboats, and recreational vehicles. The bill clarifies language with respect to exchange programs and incidental benefit disclosures and addresses the issues of automatic renewal for timeshare plans, disclosure provisions, advertising, exchange programs, and incidental benefits.

It provides that a timeshare developer may voluntarily file advertising material with the Division of Florida Land Sales, Condominiums, and Mobile Homes (Division), Department of Business and Professional Regulation (Department), and requires the Division to review and comment on any filed advertising deficiencies within 10 days. It provides that notices and other information sent by the timeshare board may be sent via electronic mail. It provides timeframes for review of exchange filings, amendments, and advertising. It provides conforming, clean-up and technical corrections.

This bill substantially amends the following sections of the Florida Statutes: 475.011, 718.103, 721.02, 721.03, 721.05, 721.06, 721.065, 721.07, 721.075, 721.08, 721.09, 721.11, 721.12, 721.13, 721.14, 721.15, 721.16, 721.17, 721.18, 721.19, 721.20, 721.24, 721.26, 721.52, 721.53, 721.54, 721.55, 721.551, 721.552, 721.56, 721.57, 721.84, 721.96, and 721.97.

II. Present Situation:

Chapter 721, F.S., provides for regulation of the offering, sale, management, and operation of real and personal property timeshare plans.¹ It governs timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located or offered within Florida and the total financial obligation of the purchaser over the term of the timeshare plan exceeds \$3,000.² A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Land Sales, Condominiums, and Mobile Homes (Division), prior to offering the timeshare plan to the public.³ The Division is authorized to cite deficiencies in the filing, if any, and approves the filing after the developer has corrected all deficiencies.

The public offering statement includes important disclosures for the timeshare purchaser including the background and experience of the developer, any pending lawsuits, and many details about the operation of the timeshare plan. The purchaser has a 10-day cancellation period after all required documents have been provided,⁴ including amendments that the developer deems to be material.⁵ The purchaser's purchase deposit is held in escrow by an escrow agent who must be independent from the developer.⁶ The purchase deposit cannot be released from escrow until several conditions have been satisfied including expiration of the purchaser's 10-day cancellation period and proof that the developer can convey the timeshare period unencumbered or with a recorded non-disturbance and notice to creditor's instrument or similar protection.⁷

The developer is responsible for any violations of ch. 721, F.S., by any party that occur during the promotion, advertising, contracting and closing of the timeshare plan.⁸ The developer must file advertising with the Division prior to using it and if the developer requests a review and approval of the advertising, the Division will perform the review and issue an approval letter.⁹

The developer must continue to file changes to the public offering statement with the Division for review and must provide those changes to purchasers who have not closed, if the developer deems the changes to be material and adverse.¹⁰ When the developer ceases to offer timeshare periods, the duty to file amendments with the Division ends.

A timeshare managing entity must be established upon creation of the timeshare plan.¹¹ The Timeshare Owners' Association¹² has many duties which are often delegated to a management

¹ Real estate timeshare plans mean plans in which the accommodations are comprised or permanently affixed to real property while personal property timeshare plans are not permanently affixed to real property. S. 721.05, F.S.

² S. 721.03, F.S.

³ S. 721.07, F.S.

⁴ S. 721.10, F.S.

⁵ S. 721.07(3), F.S.

⁶ S. 721.05(18), F.S. and S. 721.08, F.S.

⁷ S. 721.08, F.S.

⁸ S. 721.056, F.S.

⁹ S. 721.11, F.S.

¹⁰ S. 721.07(3), F.S.

¹¹ S. 721.13, F.S.

¹² S. 721.05(25), F.S.

company.¹³ The managing entity acts in the capacity of a fiduciary to the timeshare purchasers. Both are collectively the “managing entity” as defined in s. 721.05(20), F.S., and s. 721.13(1), F.S. The managing entity must annually file with the Division the adopted budget and an audited statement of the books and records of the timeshare plan.¹⁴ Timeshare exchange companies are regulated under s. 721.18, F.S.

According to representatives with the Department, 517 timeshare plans exist in the state with more than 1.6 million timeshare weeks. Fifty-six out-of-state plans also exist in Florida.

The current statutory timeshare framework is based solely upon the characteristics of *real estate* timeshare plans and does not address the special regulatory and consumer protection issues of *personal property* plans, e.g., plans involving cruise ships, houseboats, yachts, or recreational vehicles. Florida’s timeshare law was amended in 1991¹⁵ to include personal property time sharing, but specific personal property statutory provisions were not included in the legislation at that time. Therefore, industry members have not filed personal property plans with the division due to the difficulty of complying with the current real property framework. Only one personal property timeshare has been approved by the Division which involves a recreational vehicle timeshare.

Chapter 721, F.S., currently provides a regulatory framework for exchange programs but lacks specifics as to certain review timeframes for material changes and updates to an approved exchange company filing. The timeshare law is currently interpreted by the Division such that automatic renewal of timeshare plans, incidental benefits, and exchange program memberships will count towards the three-year and monetary jurisdictional thresholds, but the statute lacks specific guidelines. Also, the law currently does not allow the timeshare board to send notices to purchasers via electronic mail.

III. Effect of Proposed Changes:

Section 1. Purposes

Section 721.02, F.S., is amended to incorporate certain conforming non-substantive changes and adds personal property examples that include cruise ships, vessels, houseboats, recreational vehicles and other motor vehicles, to a list of timeshare plan regimes regulated under the statute.

Section 2. Scope of chapter

Section 721.03(1)(d), F.S., is amended to address the effect of automatic renewal provisions in consumer contracts on jurisdiction thresholds. The provision clarifies that automatic renewals are to be counted in determining the term of the plan for purposes of the jurisdictional thresholds of three years and \$3,000.

According to the Department of Business and Professional Regulation (Department), this provision is intended to be applicable to single-site timeshare plans and incidental benefits, which are included in part I, single site vacation plans, and timeshare plans. It excludes multisite timeshares provided in part II, vacation plans. Under part I, the developer cannot negate the

¹³ S. 721.13(3), F.S.

¹⁴ S. 721.13(3), F.S.

¹⁵ Ch. 91-236, L.O.F.

automatic renewal provision by providing the purchaser with the ability to cancel the contract and receive a refund or receive special advance notice or renewal. The part I renewal is intended to be different from the automatic renewal provision added to s. 721.52(4)(b), F.S., in the definition of a multisite timeshare plan.

Section 721.03(8), F.S., is also amended to provide that the chapter applies only to personal property timeshare plans offered in Florida. However, as to those personal property plans offered in Florida, limited management-related provisions of the chapter will apply in addition to most of the offering provisions.

Subsection (8)(c) is added to require any developer and any managing entity of a personal property timeshare plan to submit to personal jurisdiction in this state in a form satisfactory to the division at the time of filing a public offering statement.

Section 3. Definitions

The following definitions are added or amended in s. 721.05, F.S., to make those definitions relevant to personal property timeshare plans:

- **Accommodation** is amended to add examples of personal property timeshare plans and specify that the property must be designed for overnight occupancy.
- **Agreement for transfer** is added to provide that legal title is not transferred on a written contract for the sale of personal property until the contract price is paid in full and the terms of payment extend for more than 180 days after the contract is executed or the completion of construction, whichever is later.
- **Closing** is amended to include personal property.
- **A common expense** is amended to include fees and taxes associated with the maintenance and operation of a personal property timeshare plan.
- **Completion of construction** is amended to explain the application of this term to personal property plans.
- **Filed public offering statement** is added to distinguish between a public offering statement filed with the division versus a public offering statement intended for purchasers. The bill deletes the definition of “registered public offering statement” and amends the statute in various places to reflect the new definition.
- **Interestholder** is amended to add an owner of underlying personal property.
- **Memorandum of agreement** is amended to add personal property related provisions regarding public notice of all timeshare license plans.
- **Owner of underlying fee** is amended to add the term of “owner of underlying personal property.”
- **Owners association** is amended to clarify that the term includes all owners of timeshare interests in all types of plans, including developers and purchasers.
- **Personal property timeshare interest** is added relating to accommodations not permanently affixed to real property.
- **Registered public offering statement** is deleted.
- **Timeshare estate** is amended to provide that a timeshare estate plan may not include a personal property timeshare interest.
- **Timeshare interest** is amended to include a personal property timeshare interest.

- **Timeshare license** is amended to exclude a personal property timeshare interest.
- **Timeshare plan** is amended to include a “personal property timeshare plan” and a “real property timeshare plan.” A “personal property timeshare plan” means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property and a “real property timeshare plan” means a plan in which the accommodations are comprised of or permanently affixed to real property.
- **Vacation ownership plan and vacation membership plan** are deleted because the terms are not used anywhere in the statute.

Section 4. Contracts for purchase of timeshare interests

Section 721.06, F.S., is amended to reflect different contract disclosures for real property timeshare plans and personal property timeshare plans. It clarifies the notice requirement for assessments, charges, fees, or taxes on the property. It clarifies personal property timeshare purchaser contract cancellation rights by permitting cancellation within 10 days after a purchaser signs a contract or within 10 days after the purchaser receives the last disclosure documents required by s. 721.07(6), F.S. It delineates the filing requirements for agreements for transfer and requires filing of an agreement for deed with the Division of Florida Land Sales, Condominiums, and Mobile Homes (Division), and filing an agreement for transfer in the local public records and the Division.

Section 5. Resale purchase agreements

Section 721.065, F.S., is amended to include pertinent personal property timeshare plan disclosures of assessments and delinquencies in the resale purchase contract.

Section 6. Public Offering Statement

Section 721.07, F.S., is amended to make conforming changes consistent with other existing sections or changes in the bill. It adds pertinent disclosures to the public offering statements related to the offering of personal property timeshare plans. It provides that specific disclosures pertaining to point systems are required, and if located in a vessel, identifying numbers, fire safety plans, status of the title to personal property, and a description of any judgments. It clarifies that unlike real property timeshare plans, managing entities for personal property timeshare plans are not required to maintain deferred maintenance and capital expenditure reserve accounts, and imposes a special disclosure for plans that do not maintain such accounts, including notification that the plan may be subject to “substantial special assessments” if no reserve account is established. It provides additional documents that are required under a time share agreement including independence of escrow agent, creditor notice, registry or ownership of vessel, if applicable, and legal compliance of the timeshare instrument.

Section 7. Incidental benefits

Section 721.075, F.S., is amended to clarify that incidental benefit filings are to be reviewed for compliance purposes by the Division. Pursuant to s. 721.05(17), F.S., an incidental benefit is an “accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan prior to the expiration of his or her initial voidability period.” Incidental benefits are benefits that might not be available for the entire term of the timeshare. This provision requires specific disclosures to purchasers so those purchasers will know not to base a purchasing decision on the continued availability of incidental benefits. The bill amends

s. 721.075, F.S., to require that the source of incidental benefits be disclosed as part of those disclosures.

Section 8. Escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title

Section 721.08, F.S., is amended to deal with the conditions under which purchase deposits may be lawfully released from escrow to ensure that timeshare accommodations are available in the manner portrayed and protected from future encumbrances that would endanger the use rights of purchasers. Specifically, it is amended as follows:

- It clarifies that property other than funds can be the subject of escrow.
- It delineates the circumstances under which a purchaser's funds or other property may be released from escrow upon compliance with specified conditions by the developer, which have been divided into the compliance conditions that apply to timeshare licenses, timeshare estate, and personal property timeshare interest, respectively.
- For timeshare estates, the bill adds the requirement that the escrow agent may release the funds or property in escrow to the developer if evidence is presented that the accommodation and facility is, pursuant to the provisions of ch. 721, F.S., free from claims of other interestholders, is subject to a nondisturbance and notice to creditors, or has been transferred into a trust. For a personal property timeshare interest, funds may be released under the following additional requirements. Any agreement for transfer sale must conform to the requirements in s. 761.06, F.S., for a contract for purchase and this section. Evidence must be provided that the property's legal title has been transferred into a trust, into an owner's association, or by certificate of title.
- Provisions are added that address the specific circumstances that accompany the offering of timeshare plan interests on a cruise ship or passenger vessel. It also covers the circumstances under which a trust or owners' association may be used as a financial assurance vehicle, and provides for a special transfer restriction to be placed on the certificate of title for personal property plan accommodations that are transferred in that manner.
- It clarifies existing law and procedure for the substitution of a financial assurance for funds held in escrow.
- Provisions are reworded to make the plans parallel to the existing nondisturbance and notice to creditor requirements of s. 721.53, F.S., and to address the different manners in which constructive notice of such requirements is given for real property and personal property timeshare plans. It provides for recording of real property plans in the public record and filing personal property plans attached to any security agreement or "other agreement executed by an interestholder." The committee substitute does not define what other agreements qualify as an "other agreement executed by an interestholder." Division staff suggests that the broad language will provide flexibility to regulate personal property timeshare interests with which the Division has had little experience.
- In lieu of the requirements in s. 721.08(2)(c)3.e.(III), it gives the division director discretion to accept alternate means of protecting the use rights of purchasers in the subject accommodations and facilities of the timeshare plan against unfilled and inferior claims. The committee substitute does not specify what will constitute an "alternate means" to protect the rights of purchasers. According to the Division, however, in

- applying similar provisions in existing law, the Division has required a letter of credit or a bond in the past protect consumers. The Division also suggests that the broad grant of discretionary authority will provide the flexibility to regulate personal property time share interests with which the Division has had little experience.
- The director of the division is given discretion to accept other methods of protecting the long-term interests of consumers against the claims of interestholders and their creditors.
 - It differentiates between the transfers of title to timeshare estates and to personal property timeshare interests.
 - It extends third-degree felony punishment to regulated parties who intentionally fail to comply with the financial assurance provisions of this section pertaining to the creation and operation of trusts and owners' associations.

Section 9. Reservation agreements; escrows.

Section 721.09, F.S., is amended to make a conforming change by changing the phrase "registered public offering" to "filed public offering."

Section 10. Advertising materials; oral statements.

Section 721.11, F.S., is amended to make filing advertising materials by the developer with the Division "voluntary," but requires the Division to review all materials submitted and notify the developer of any deficiencies within 10 days. Current law requires a developer to file all advertising materials with the Division, but does not require the Division to review such material unless requested by the developer.

Section 11. Recordkeeping by seller

Section 721.12, F.S., creates a provision for personal property timeshares that requires a seller to keep a copy of the contract until an instrument of transfer is delivered to the purchaser.

Section 12. Management

Section 721.13, F.S., is amended to change the requirements placed on managing entities as follows:

- It clarifies that a developer must create an owners' association (for those plans that have owners' associations) prior to the first closing of a sale of a timeshare interest.
- It provides the managing entity with an alternative to sending out numerous copies of assessment budgets to owners during the budget approval process, if it has been delivered pursuant to ch. 718 (condominium law) or ch. 719 (cooperative law), F.S.
- It also clarifies that any reserves left over upon termination of a timeshare plan are to be refunded pro rata to purchasers.
- It clarifies that an owner's e-mail address in the hands of the managing entity is to remain private without his or her prior consent.
- It permits the use of e-mail, with an owner's consent, to provide notices to an owner. No provision is made in the committee substitute for an owner to revoke his or her consent to receive notice by e-mail. Additionally, proxies and written consents may be transmitted by e-mail as long as the electronic signature can be authenticated.
- It exempts the management of personal property timeshare plans from certain provisions of this section because personal property accommodations are not affixed to real property

and are most typically not physically located in Florida and are therefore inherently difficult to regulate as to management and operational functions.

Section 13. Discharge of managing entity

Section 721.14, F.S., is amended to exempt personal property timeshare plans from provisions relating to the discharge of the managing entity.

According to the Department, the exemption is based upon the fact that Florida is not asserting jurisdiction or control over most management-related duties because those functions are taking place outside the state.

Section 14. Assessments for common expenses

Section 721.15, F.S., is amended to clarify that depreciation expenses for income-producing property may only be excluded from the obligation of a developer under a developer guaranty to the extent that such depreciation expenses exceed the net income produced from the property. It exempts personal property timeshare plans from this section since, by its nature, personal property is movable from jurisdiction to jurisdiction.

Section 15. Liens for overdue assessments

Section 721.16, F.S., is amended to provide that lien provisions relating to real property timeshare plans will not be applicable to personal property timeshare plans. The Department commented that the “section presupposes the ability to place liens on a real property timeshare interest and foreclose on such liens, which would not typically be possible in a personal property scenario.”

Section 16. Transfer of interest

Section 721.17, F.S., is amended to add personal property timeshare plans to the coverage of the section. It is reworded to make it parallel to the existing nondisturbance and notice to creditor requirements of s. 721.53, F.S. and to the proposed amendments to s. 721.08(3), F.S.

Section 17. Exchange programs; filing of information and other materials; filing fees; unlawful acts in connection with an exchange program.

Section 721.18, F.S., is amended to require that purchaser participation in an exchange program is voluntary (other than as it pertains to purchasers of multisite timeshare plans). It requires the disclosure of any conversion or other fees payable to a third party. It requires an exchange company to file consumer membership agreements and applications with the Division for review and established procedures for such review. An exchange company has the discretion to determine whether an amendment to an exchange program materially alters an exchange program in a way that is adverse to a purchaser. An exchange company does not have to provide an amendment to a purchaser who has not closed on the purchase on an exchange program, if the exchange company determines the amendment does not materially alter the program. The Division shall review any promotional material filed by an exchange company upon request.

Section 18. Provisions requiring purchase or lease of timeshare property by owners' association or purchasers; validity.

Section 721.19, F.S., is amended to apply the law to personal property timeshares.

Section 19. Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.

Section 721.20, F.S., is amended to make it unlawful to charge an advance fee for the listing of a personal property timeshare interest. It exempts personal property timeshare plans from certain provisions of the section since personal property, by its nature, is movable from jurisdiction to jurisdiction.

Section 20. Firesafety

Section 721.24, F.S., is amended to exempt personal property timeshares from the provisions of the section since personal property, by its nature, is movable from jurisdiction to jurisdiction.

Section 21. Regulation by division

Section 721.26, F.S., is amended to make conforming changes so that it is clear that the Division's enforcement and compliance powers apply to personal property timeshares.

Section 22. Definitions

Section 721.52, F.S., is contained in Part II of ch. 721, F.S., related to vacation clubs (multisite timeshare plans). The definitions under this section are amended as follows:

- **Multisite timeshare plan** is amended to provide that automatic renewal of the membership contract is counted for purposes of determining jurisdictional thresholds of \$3,000 and three years, unless the purchaser can terminate the membership at any time with a pro rata refund or receives notice of no less than 30 days and no more than 60 days prior to renewal as to the right to terminate prior to automatic renewal;
- **Nonspecific multisite timeshare plan** is added to include personal property timeshare plans and multisite timeshare license plans for which the purchaser receives a right to use all accommodations through the reservation system but no right to use particular accommodations in the event of termination of the plan; and
- **Specific multisite timeshare plan** is added to include a multisite timeshare license plan or personal property timeshare plan for which the purchaser receives a specific right to use accommodations at a particular component site with use rights in the other accommodations through a reservation system.

Section 23. Subordination instruments; alternate security arrangements.

Section 721.53, F.S., is amended to require that developers must comply with applicable provisions of s. 721.08, F.S. (relating to nondisturbance of accommodations and facilities), relating to personal property timeshares in multisite timeshare plans.

Sections 24 – 28.

These sections make conforming changes to the definition changes made elsewhere in the bill. These sections amend s. 721.54, s. 721.55, s. 721.551, s. 721.552, and s. 721.56, F.S.

Section 29. Offering of timeshare estates in multisite timeshare plans; required provisions in the timeshare instrument.

Section 721.57, F.S., is amended to clarify that trust timeshare estate plans are governed by s. 721.08, F.S., and not s. 721.57, F.S.

Section 30 – 32.

These sections make conforming changes to s. 721.84, 721.96, and s. 721.97, F.S., to make these sections applicable to personal property timeshares.

Section 33.

This section makes conforming changes to s. 475.011, F.S.

Section 34.

This section makes conforming changes to s. 718.103, F.S.

Section 35.

This section provides that the bill takes effect upon becoming law. However, with respect to any timeshare plan or exchange program filing approved by the Division prior to the date the act becomes law, certain amendments to ch. 721, F.S., shall not apply until the earlier of January 1, 2005, or the date that any amendments to such filings are made subsequent to the date the act becomes a law. With respect to timeshare plan filings approved by the Division prior to the date the act becomes law, amendments to s. 721.08(3), F.S., do not apply to the nondisturbance and notice to creditors instruments required by s. 721.08, F.S., unless and only to the extent that the developer otherwise voluntarily complies with all or a portion of the provisions.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

A fee of \$100 is imposed for filing each amendment to materially change an approved exchange company filing. Revenues are not anticipated to be significant according to the representatives with the Department. The Department has received 3 amendments (totaling \$300) from July 2003, to January 2004, which materially changes an exchange company filing.

B. Private Sector Impact:

Developers of personal property timeshares will benefit under the provisions of this bill because it provides a specific framework for developers to follow in filing, promoting, and selling their timeshare plans.

C. Government Sector Impact:

Representatives with the Department of Business and Professional Regulation anticipate that the net effect of the bill is neither an increase nor a decrease in their expenditures. The Division already has authority to regulate personal property timeshare plans but it lacks the specific framework to fully implement its personal property jurisdiction. The increase in filings is not anticipated to necessitate increased staffing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

Provides that consent to receive notice by electronic mail is effective until revoked.